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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1244

CITY OF CHICAGO, a Municipal Corporation,

Plaintiff-Respondent,

vs.

GENERAL REALTY CORPORATION, NORTH AMERCAN COMPANY FOR LIFE AND HEALTH INSURANCE, CHARLES KRAUT, and J. EDWARD JONES,

Defendants,

ROBERT A. KING, as Trustee under Trust No. 1,

Defendant-Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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To: *The Honorable Chief Justice and the Associate Justices of the United States Supreme Court*:

Petitioner, Robert A. King, as Trustee under Trust No. 1, respectfully prays that the Court issue a Writ of Certiorari to review a judgment of the Supreme Court of Illinois denying leave to him to appeal from the judgment of the Appellate Court of Illinois, First District, affirming a decree for demolition of the building in question, entered on July 14, 1971. A petition for rehearing was filed August 20, 1971 and was denied on September 9, 1971.

REFERENCE TO OPINIONS BELOW.

The opinion of the 4th Division of the Appellate Court in this case is appended hereto. The opinion is reported in 273 N.E. 2d 712. The opinion in the case of *City of Chicago* v. *Busch,* decided by the 2d Division of the Appellate Court, reversing a decision of the same Judge, involving substantially the same set of facts, likewise is appended.

The decisions of the U. S. District Court of Illinois, Eastern Division, entitled *Napolitano* v. *Ward et al,* 317 Fed. Supp. 79-83; 83-86 in which he sought relief from being relieved by the Judges Commission from his office as Judge because of improper conduct as a judge is not reproduced, but is referred to herein.

JURISDICTIONAL STATEMENT.

The jurisdiction of this Court is invoked pursuant to Title 28 Section 1257 of the United States Code Annotated.

The Judgment of the Supreme Court of Illinois denying leave to appeal was entered on November 29, 1971.

This Court entered an order extending the right of petitioner to file his Petition for Certiorari to and including March 28, 1972, pursuant to Title 28 Section 2101.

QUESTIONS PRESENTED.

Whether the City of Chicago could take the property from the owner by placing a receiver in the property without giving said owner notice of the application for such receiver as the statute required?

Whether the building was a public nuisance which could not be abated in any other manner than by complete destruction?

Whether Illinois law required findings of the specific defects dangerous, unsafe and beyond repair before demolition of the building legally could be decreed and if so were such findings made?

Whether the decree was in conformity to the Demolition Act as construed by the Supreme Court of Illinois in *City of Aurora* v. *Meyer*?

Did the Court as an arm of the State of Illinois deprive the owner petitioner his property without Due Process of Law and deny him Equal Protection of the Law as required by the 14th Amendment to the U.S. Constitution and by Sections 2 and 19 of Article II of the Illinois Constitution?

Whether proper notice was given to the owner of the property, the petitioner herein, of the application for the decree of demolition?

Whether the decree of demolition followed *City of Aurora* v. *Meyer,* 38 Ill. 2d 131, which construed the act and defined the conditions which had to exist before a decree of demolition legally could be entered?

Whether the City of Chicago gave 30 days notice to the owner of the building or his agent to repair the building as required by Chapter 24 Sec. 11-31-1 Illinois Statutes?

Whether the Court had jurisdiction to enter the particular decree of demolition herein and whether said decree is void because it had no such jurisdiction to enter the particular order?

CONSTITUTIONAL PROVISIONS INVOLVED IN THE CASE.

14TH AMENDMENT TO THE U.S. CONSTITUTION:

Section 1:

"• • • Nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

SECTIONS OF THE ILLINOIS CONSTITUTION THEN IN FORCE:

Article II, Section 2:

"No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the law."

Article II, Section 19:

"Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property • • •; he ought to obtain by law, right and justice freely, and without being obliged to purchase it, completely and without denial, promptly, and without delay."

ILLINOIS STATUTES AND COURT RULES RELEVANT TO THE CASE:

Ch. 24 Ill. R. S. 11-31-1:

'Sec. 11-31-1: The corporate authorities of each municipality may demolish, repair or enclose or cause the demolition, repair or enclosure of dangerous and unsafe buildings or uncompleted and abandoned buildings. The corporate authorities shall apply to the circuit court of the county in which such building is located for an order authorizing such action to be taken with respect to any such building if the owner or owners thereof, after at least 30 days' notice so to do, shall have failed to put such building in a safe condition or to demolish it. * * *"

Ch. 24 Sec. 11-31-2:

"If the appropriate official of any municipality determines, upon due investigation, that any building or structure therein fails to conform to the minimum standards of health and safety as set forth in the applicable ordinances of such municipality, and the owner or owners of such building or structure fails, after due notice, to cause such property so to conform, the municipality may make application to any court of competent jurisdiction for an injunction requiring compliance with such ordinance or for such other order as the court may deem necessary or appropriate to secure such compliance."

Ch. 22 Ill. R. S. Section 54:

"Before any receiver shall be appointed, the party making application shall give bond to the adverse party in such penalty as the court or judge may order and with security to be approved by the court

or judge conditioned to pay all damages including reasonable attorney fees sustained by reason of the appointment and acts of such receiver, in case the appointment of such receiver if revoked or set aside; provided, that bond need not be required, when for good cause shown, and upon notice and full hearing, the court is of opinion that a receiver ought to be appointed without such bond."

Rule 2.1 of the Uniform Rules of the Circuit Courts of Illinois:

"(a) Notice required. Except in actions appearing on the daily trial call or during the course of trial, written notice the hearing of all motions shall be given to all parties who have appeared and have not theretofore been found by the court to be in default for failure to plead, and to all parties whose time to appear has not expired on the date of notice."

STATEMENT OF THE CASE.

On June 19, 1968 the City of Chicago filed its complaint against Chicago Title and Trust Co., as trustee; General Realty Corporation and L. Abraham. L. Abraham had not owned or controlled the premises for years; the address of General Realty Co. was given as 100 W. Monroe, Chicago, Illinois, whereas it was not at said location but a block away at 79 W. Monroe St., Chicago, Illinois. Chicago Title and Trust Co., as mortgage trustee alone was served. The summons shows "Not found" as to General Realty and moves as to Abraham.

Count I of the complaint charged that the said defendants owned, maintained, operated, collected rents for or had an interest in said property; that on or about May 3, 1968 and on numerous other occasions the following violations of the Municipal Code of Chicago existed in said property and said violations have not been corrected:

a. Repair interior walls or ceilings (Bsmt 3255-57 & 2d floor bathroom 3257). (Citing ordinance section.)

b. Replaster ceilings and sidewalls where plaster is loose, broken or has fallen off. (Ordinance section cited.)

c. Place the surfaces of walls and ceilings in a clean, smooth and tight condition. (Entire building) (Ordinance section cited.)

d. Replace broken, missing or defective window panes. (All wnds at grade). (Ordinance section cited.)

e. Discontinue use of basement dwelling units and restore space to its original use and layout because of:

Inadequate separation of dwellings from all other parts of building. (Bsmt. 3255-57)

Substandard partitions forming non-load bearing walls of rooms. (Bsmt 3255-57)

Habitable rooms are more than two feet below grade.

Inadequate light and ventilation. (Bsmt 3255-57) (Ordinance section cited.)

f. Rid premises of rats and properly seal all rat holes. (Entire bldg:) (Ordinance section cited.)

g. Provide adequate garbage and refuse containers of impervious material and construction with tight metal covers. (Bsmt.) (Ordinance section cited.)

h. Remove accumulations of refuse and debris and keep premises clean and free from such accumulation. (Bsmt and rear yard.) (Ordinance section cited.)

Count II realleged the foregoing and further alleged that the levying of a fine was not adequate and that it was necessary that a temporary and permanent injunction issue and that a receiver be appointed to bring the subject property into compliance with the Municipal Code of the City of Chicago; that the Chicago Commissioner of buildings has determined said building to be dangerous and unsafe or uncompleted and abandoned.

Count II prayed: (a) for a temporary and permanent injunction requiring defendants to correct said violations and to restrain future violations; (b) the appointment of a receiver, if necessary, to correct the conditions alleged with full powers of receivership, including the right to issue and sell receiver's certificates; (c) for an order for plaintiff to demolish said premises and for judgment against defendants and a lien for the cost of demolition in accordance with Ch. 24 Sec. 11-31-1 Illinois R. S.; (d) other and further relief found necessary.

An amendment to the complaint filed on August 30 alleged that on or about August 21, 1968 and on other occasions the following violations of the Municipal Code of Chicago existed in said property and said violations have not been corrected: a. Repair or replace defective or missing members of exterior stair system. (Repair rear

porches' missing members and loose rails grade to 2d floor.) (Ordinance sec. cited.)

The record title holder was General Realty Corporation but it had sold the building to First National Bank of Blue Island, as trustee, with Robert A. King as trustee. J. Edward Jones actually was in possession of the premises for King. He had a rental office there and was repairing the building, leasing apartments, collecting rents etc. and was there and his workmen were there every day and it was impossible for the building inspectors not to know of such possession and the law of Illinois provided that possession of premises was notice to the world of the interest claimed by the possessor.

The complaint did not allege that any notice was given to the owner or to any party in possession of claimed violations of the code as required by Ch. 24 Sec. 11-31-1 or 2. The building was in relatively good condition.

On the return date of the summons, in spite of the fact that no notice had been given by the City of any claimed violations; that neither the record title holder nor agents in possession had been served; that no notice had been given as required by Ch. 22 Ill. R. S. Sec. 54; and the fact that only minor violations were charged, Judge Napolitano as presiding judge (since relieved of his duties as a judge for improper conduct as a judge) appointed Number Two Chicago Dwellings Association, an Illinois not-for-profit corporation, owned, controlled and dominated by the Chicago Building Department, as receiver for the purpose of vacating the tenants from the building without bond or any finding of any emergency or good reason for the necessity of such appointment

without the owner or his agents being served and in court. The order of July 16, 1968 provided that no notice of the order should be given to any of the parties of record and that the receiver should have possession and control to the extent needed. The judge's signature was for an order for proceedings held on July 16th, 1968 but it was not dated until August 1st and did not appear of record on August 6th, 1968.

Judge Napolitano did not allow private counsel in this case to submit tendered orders but it was his custom to allow the corporation counsel to prepare the order without submitting it to counsel and without opportunity to object to its contents.

The writer of this brief as agent of the owner some few days after the hearing on July 16, 1968 was informed by one of the tenants that a man had been around and interviewed all of the tenants and had told them Mr. Jones no longer had any control of the building and that they should not pay him any more rent and that the building was going to be destroyed and that they would have to move by August 31, 1968.

On August 6, 1968 J. Edward Jones entered the appearance of First National Bank of Blue Island, as trustee, Robert A. King and himself as attorney for said three persons, and tendered a motion to strike the complaint. Judge Napolitano, on the objection of the Corporation counsel Gausselin refused to allow it to be filed.

By it said defendants moved to strike the complaint and to vacate orders entered thereunder on the grounds that the record did not show the order of July 16, 1968 and they had no knowledge of its contents; no title

owner named in the complaint; record did not show service of summons on owner or parties in possession; nothing in record showing that notice for the application for receiver and for vacation of premises by tenants given by plaintiff to owner or persons in possession or their agents; nothing in record showing that alleged violations or notice to correct said violations set forth in complaint were called to the attention of the owner of record or any party in possession nor that said parties have refused after notice to correct said violations or make repairs; nothing in record showing that any injunction issued to compel the owner to make such repairs or to correct violations; no allegation in the complaint that the alleged violations were "dangerous and unsafe" for tenants and users; complaint does not allege the existence of any emergency requiring the appointment of a receiver and the vacation of the building by tenants; no allegation in the complaint that the violations alleged could not be corrected by appropriate repairs by the owner or parties in possession or that said repairs could not be made while tenants remained in possession and no allegation of any substantial reason why said building should be abandoned to vandals by ordering its vacation by the tenants; that the record does not show that the appointment of a receiver and the vacation of the building was necessary for the preservation of the building or the making of repairs and no substantial reasons alleged for taking the property from the owners and agents in possession; the record shows no bond for the receiver and the complaint does not allege that a receiver should be appointed without bond nor does the record show that after notice and a full hearing that the Court was of the opinion that a

receiver should be appointed without bond; that no source of income for the operation of the building other than the building income shown by the complaint or the record and said record shows irreparable damage to the owner and tenants; that Ch. 24 Section 11-31-1 and 2 are contrary to sections 2 and 19 of Article II of the Illinois Constitution and the 14th Amendment to the U.S. Constitution insofar as they permit demolition of a building and the appointment of a receiver without requiring that said buildings be dangerous and unsafe and that the owner or party in possession has refused on notice to correct said violations; that the record shows that the said property was taken from the owners contrary to the settled procedure of the laws of Illinois without due process of law and without the equal protection of the law contrary to sections 2 and 19 Article II of the Illinois Constitution and to the 14th Amendment to the U.S. Constitution.

Judge Napolitano refused to allow said defendants to file said motion to strike and refused to enter an order denying said filing but entered an order that the receiver should assume full possession and control of the property and continue to re-locate the tenants.

Judge Napolitano announced orally that the 1st National Bank of Blue Island, as trustee, Robert A. King, La Salle National Bank, Charles Kraut and J. Edward Jones would be impleaded but no order was entered until August 12, 1968 when the order (without notice to counsel) provided as above and that special process servers be appointed.

On August 12th, 1968 Nutchell Edelson, Jr. entered his appearance as co-counsel with J. Edward Jones for J.

Edward Jones, Robert A. King and First National Bank of Blue Island, as trustee and filed a verified petition setting up most of the foregoing grounds for dismissal and set forth factually that the property had been bought in April 1968 and that the Frst National Bank of Blue Island, as trustee was trustee under a naked land trust and that King and Jones were the owners and that for cetrain personal reasons the deed had not been recorded; that the said owners had appeared before the Hon. Judge Murphy and had offered to correct all violations; that the receiver had failed to collect rents and had failed to do anything to improve the property but had informed the tenants the building was to be destroyed and that they had to vacate the premises before August 31, 1968; that the building was vacated and the order not set aside it would be impossible to obtain financing to repair the premises; that the terms of the insurance policy would terminate the insurance policy coverage for fire; that the building would be subject to vandalism, crime and fire potential as would be dangerous to the citizens in the adjacent area;

That petitioners had employed Wilbur J. Carlson as architect for repairing and abating all violations and appended his letter stating he was hired; that he had inspected the building and that it could be repaired while the premises were occupied and that he desired time in which to complete plans and specifications etc.;

The affidavit of J. Edward Jones was appended stating: that petitioners had employed Acacia Scavenger Service which had been servicing the building; that Frank Zarcone, doing business as L-M Exterminating Service had been servicing the building since the building had been in control of the present owner;

That repairs had been made in compliance with the Code and that the architect was to secure permits and would do so;

That he had hired John Pyritz as general contractor to do the necessary repairs.

The letter of John Pyritz was appended which stated that he proposed to do the repair work in accordance with architectural plans and specifications prepared by architect W. G. Carlson, all work to be done in accordance with the Municipal Code of Chicago and all work not to exceed $5,375.00, to be done after securing necessary building permits; that said work did not include painting, decorating or electrical work nor housekeeping.

On September 5th, 1968 North American Company, the first mortgagee, was impleaded.

Thereafter on February 21, 1969 Mitchell Edelson got leave to withdraw as attorney for King and Jones.

On February 21, 1969 a decree for demolition of the building was entered. No notice was given Jones or King that such order would be sought.

On February 28, 1969 said order of demolition was stayed the order providing that plans had been made for rehabilitation of the said property.

On April 18, 1969 Judge Napolitano discharged Jones and King, the discharge to be effective when they had deposited anything required of them in escrow No. 32-537 in C.T. & T. Co.; that a rehabilitation permit should be applied for and work commenced within 30 days and the order of demolition of February 28, 1969 should be stayed and the matter was continued to May 23, 1969.

On May 23, 1969 Judge Napolitano ordered that the decree for demolition be put into full force and effect. No notice of such motion by the City or of the proceedings of April 18, 1969 was given King and Jones.

May 24, 1969 Notice of appeal filed with proof of service on all counsel and notice of motion to have supersedeas bond set and the bond approved on May 26th, 1969 was served. On May 26th, 1969 Judge Napolitano struck the notice for setting the supersedeas bond.

Based on the income of the building of $33,000.00 per year the building was worth at least five times the rental value or $165,000.00. The 1st mortgage had a balance due of $60,000.00 and the second mortgage a balance of $29,-000.00; cost of repair less than 4%.

The building did not require major construction.

ARGUMENTS OF REASONS FOR THE ALLOWANCE OF THE WRIT.

BEFORE THE COURT LEGALLY COULD ORDER A DEMOLITION OF THE BUILDING UNDER CH. 24 ILL. R. S. SEC. 11-31-1 THERE SHOULD HAVE BEEN AN ALLEGATION AND PROOF THAT THE BUILDING WAS "DANGEROUS AND UNSAFE" AS DEFINED BY THE SUPREME COURT OR THAT IT WAS "UNCOMPLETED AND ABANDONED" TO GIVE THE COURT JURISDICTION. NEITHER OF SAID ALLEGATIONS WERE MADE AND THE DECREE COULD NOT DECREE SOMETHING THE PARTIES WERE NOT CALLED UPON TO MEET AND DEFEND.

City of Aurora v. *Meyer*, 38 Ill. 2d 131, 136, 137; 230 N.E. 2d 200, 203.

Ch. 24 Ill. Rev. Stat. Sec. 11-31-1.

City of Chicago v. *Mulligan Enterprises*, 27 Ill. App. 2d 481, 488-9.

The cases construing the statute Ch. 24, Sec. 11-31-1 and 2 allowing demolition set forth the guide lines that the building be "dangerous and unsafe" and that the building can be repaired without substantial reconstruction. See the cases of *City of Aurora* v. *Meyer*, 38 Ill. 2d 131, 136-8; *City of Chicago* v. *Mulligan*, 27 Ill. App. 2d 481, 488-9. The mortgagee furnished funds and repaired the porches and the building was not "dangerous and unsafe". Demolition was unjustified and illegal. The building legally could be destroyed only if the condition complained of could be abated in no other way. On notice the owners immediately began to remedy the condition but their property and its income was taken from them and they were prevented by the City of Chicago from repairing the building.

THE CITY LEGALLY COULD NOT PROCEED TO ORDER DEMOLITION WITHOUT ALLEGATION AND PROOF THAT IT HAD GIVEN AT LEAST 30 DAYS WRITTEN NOTICE TO PUT SUCH BUILDING IN A SAFE CONDITION OR DEMOLISH IT AND THE OWNERS HAVE FAILED SO TO DO. NEITHER OF SAID ALLEGATIONS WERE MADE NOR DO FINDINGS SHOW SUCH WAS DONE.

Ch. 24 Ill. Rev. Stats., sec. 11-31-1.
City of Chicago v. *Mulligan Enterprises*, 27 Ill. App. 2d 481, 488.

As construed by the Courts the giving of notice is a condition precedent to a proceeding of this type under Ch. 24-31-1 and 2. See *City of Chicago* v. *Mulligan Enterprises*, 27 Ill. App. 2d 481, 488-9.

It was the duty of the City to serve notice on the parties in possession and control of the property and they are deemed to have notice of the rights of said parties in possession and control.

THE THRUST OF THE PROVISIONS OF CH. 24 ILL. R. S. SECS. 11-31-1 AND 2 IS THAT THE CITY CAN WARN AN OWNER THAT HIS PROPERTY DOES NOT CONFORM TO THE MINIMUM STANDARDS OF HEALTH AND SAFETY AS SET FORTH IN APPLICABLE CITY ORDINANCES AND IF HE DOES NOT CAUSE THE BUILDING TO CONFORM, IT MAY COMPEL HIM BY INJUNCTION TO DO SO, OR IT MAY ORDER THE BUILDING TO BE DEMOLISHED. RECEIVERSHIP TAKES THE BUILDING FROM THE OWNER, TAKING FROM HIM THE CONTROL, INCOME AND POSSESSION NECESSARY FOR HIM TO COMPLY WITH SAID SECTIONS. THE LEGISLATURE DID NOT GIVE THIS REMEDY OF RECEIVERSHIP BECAUSE IT IS INCONSISTENT WITH THE REMEDY OF INJUNCTION TO FORCE THE OWNER TO BRING THE BUILDING UP TO MINIMUM

STANDARDS, AND IT IS NOT AVAILABLE AS A REMEDY HERE.

Ch. 24 Ill. Rev. Stats., Secs. 1 and 2.
Chicago Dock Co. v. *Garrity,* 115 Ill. 155, 165.
Townsend v. *Gash,* 267 Ill. 578, 584.
Wood v. *Stewart,* 120 Ill. App. 34, 36.
People ex rel. Palmer, Dir. Ins. v. *Niehaus, J.,* 356 Ill. 104, 112-114.

The remedy of receivership is not given by the statute and is inconsistent with the provision for a mandatory injunction to have the building repaired. Receivership takes the property from the owner; mandatory injunction compels him to rehabilitate it with possession.

RECEIVERSHIP IS A DRASTIC REMEDY WHICH TAKES AWAY THE PROPERTY FROM THE OWNER AND BEFORE A COURT CAN LEGALLY DO THIS, (IF THE REMEDY OF RECEIVERSHIP IS AVAILABLE HERE), THE OWNERS HAD TO BE PARTIES TO THE SUIT; THEY MUST HAVE BEEN GIVEN NOTICE OF THE APPLICATION FOR THE APPOINTMENT OF THE RECEIVER; AND THEY MUST BE AFFORDED A "FULL HEARING": WHEN THE RECEIVER WAS APPOINTED, THE OWNERS WERE NOT PARTIES TO THE SUIT, HAD RECEIVED NO NOTICE OF THE APPLICATION FOR A RECEIVER; AND DID NOT HAVE ANY HEARING WITH THE RIGHT TO PUT IN EVIDENCE.

Baker v. *Administrator of Backus,* 32 Ill. 79, 97.
Ch. 22 Ill. Rev. Stats., Sec. 54.
Bagdonas v. *Liberty Land & Investment Co.,* 309 Ill. 103, 105, 110, 111.
Simpson v. *Adkins,* 311 Ill. App. 543, 550.
Sharpinski v. *Veterans of Foreign Wars,* 343 Ill. App. 271, 273-4.

Neither notice nor a full hearing was given the owners here. Inquiry of the parties in possession would have disclosed the owners here. The City is deemed to know the interest of parties in possession so that notice and a full hearing could be given. It was not given. Ch. 22 Section 54 requires this. The cases above cited require it. Receivership is drastic at best; under these facts it is intolerable.

ONE DEALING WITH LAND IN THE POSSESSION OF ANOTHER DEALS WITH NOTICE OF FACTS WHICH INQUIRY OF THE POSSESSOR WOULD DISCLOSE. THE CITY WAS CHARGEABLE WITH THE NAMES OF THE OWNERS BEFORE SUIT WAS FILED HEREIN. POSSESSION IS NOTICE EQUAL TO THE RECORDING OF A DEED.

Mauvaisterre Drainage District v. *Frank,* 313 Ill. 431, 436.

German-American National Bank v. *Martin,* 277 Ill. 629, 649.

The above cases hold that possession is equivalent to the recording of a deed and gives notice of the rights claimed by possessors.

A RECEIVER MUST BE A DISINTERESTED PERSON. NUMBER TWO CHICAGO DWELLINGS ASSOCIATION IS A CORPORATION OWNED, CONTROLLED AND DIRECTED BY THE CITY OF CHICAGO OR ITS AGENTS; IT IS BUT THE ALTER EGO OF THE BUILDING DEPARTMENT OF THE CITY OF CHICAGO. IT WAS NOT A DISINTERESTED PERSON AND COULD NOT SERVE LEGALLY OR PROPERLY AS A RECEIVER.

Baker v. *Administrator of Backus,* 32 Ill. 79, 115-116, 96, 97, 112, 115.

The case of *Baker* v. *Administrator of Backus,* 32 Ill. 79, 115-6 clearly shows that the receiver in this case was not the type required.

The complaint asked for the appointment of a receiver to "bring the subject property into compliance" but Judge Napolitano appointed the receiver to vacate the premises which was contrary to the receiver's duty of preserving the property.

Out of 21 apartments and one store occupied by tenants for living quarters and two stores only rent on 8 units had been collected for a short period by the receiver.

The receiver was municipally owned and controlled and was not a proper receiver. It clearly was not disinterested.

THE RECEIVER WAS NOT APPOINTED AT THE PROPER TIME AND THERE WAS NO NECESSITY FOR APPOINTING A RECEIVER AND THIS COURT SHOULD REVERSE THE CASE AND DECLARE THE LOWER COURT'S ACTIONS VOID.

Baker v. *Administrator of Backus,* 32 Ill. 79, 115.

Vienna Bakery Co. v. *Heissler,* 50 Ill. App. 406, 412.

Craver & Steele Co. v. *Whitman & Barnes Co.,* 62 Ill. App. 313, 317.

The statute Ch. 22 Section 54 and its construction by the above cases show that the lower court's action was void and this Court should declare its actions void.

THE UNIFORM RULES OF THE CIRCUIT COURTS OF ILLINOIS PROVIDE THAT WRITTEN NOTICE OF THE HEARING OF ALL MATTERS SHALL BE GIVEN TO THOSE PARTIES NOT DEFAULTED AND SUCH RULES HAVE THE FORCE OF STATUTES OF THE LEGISLATURE.

Rule 2.1 Uniform Circuit Court Rules.

North Avenue Building Association v. *Huber,* 286 Ill. 375, 383.

Feldott v. *Featherstone,* 290 Ill. 485, 488.

Kemper v. *Weber,* 318 Ill. 494, 497-8.

Admiral Corporation v. *Newell,* 348 Ill. App. 180, 182-4.

Moore v. *Jones,* 12 Ill. App. 2d 488, 492-6.

Jones, as attorney for himself and King, trustee, was entitled to notice of every order sought. Such was held in the above cases. The writer was defendant in *Moore* v. *Jones.*

WHERE THE RECORD FAILS TO SHOW SERVICE OF PROCESS OR NOTICE AS REQUIRED BY STATUTES, OR BY RULES HAVING THE FORCE OF STATUTES, SUCH ERROR IS NOT CURED BY A RECITAL IN THE JUDGMENT THAT THE COURT HAD JURISDICTION OF THE PARTIES OR SUBJECT MATTER.

Sherman & Ellis, Inc. v. *Journal of Commerce,* 259 Ill. App. 453, 457-9.

The record does not show that Jones and King were served with notice because in fact they were not served. The fact that the Court found that it had jurisdiction did not correct this error and such orders entered without notice to them are void as to them.

IT IS A RULE OF LAW REPEATEDLY REITERATED BY THE SUPREME COURTS OF THE UNITED STATES AND OF ILLINOIS THAT ALTHOUGH THE COURT MAY HAVE JURISDICTION OF THE SUBJECT MATTER AND OF THE PARTIES, YET JURISDICTION IN A PARTICULAR CASE IS THE POWER TO RENDER THE PARTICULAR JUDGMENT ENTERED AND EVERY ACT OF THE COURT BEYOND ITS JURISDICTION IS VOID.

Ex Parte Reed, 100 U.S. 13, 22-23.
Johnson v. *Zerbst,* 304 U.S. 458, 468.
People ex rel Maglori v. *Siman,* 284 Ill. 28, 32.
Armstrong v. *Obucino,* 300 Ill. 140, 142-3, 145.
People ex rel. Palmer, Dir. of Insurance v. *Niehaus, Judge,* 356 Ill. 104, 112-114.
Thayer v. *Village of Downers Grove,* 369 Ill. 334, 339-341.
Ch. 24 Ill. Rev. Stats., Sec. 11-31-1.

Here, clearly the Court had jurisdiction of the subject matter and the parties. When the Court fails to perform in accordance with statutes or rules, the doctrine of the above cases applies.

As this Court said in *Johnson* v. *Zerbst,* 304 U.S. 458, 468, the Court loses jurisdiction; because its proceedings are *coram non judice.*

THE STATE OF ILLINOIS TOOK THE PROPERTY INVOLVED HERE FROM THE OWNERS WITHOUT DUE PROCESS OF LAW CONTRARY TO THE PROVISIONS OF SECTIONS 2 AND 19 OF ARTICLE II OF THE ILLINOIS CONSTITUTION AND THE 14TH AMENDMENT TO THE U.S. CONSTITUTION.

Hurtado v. *California,* 110 U.S. 516, 535.
Durkin v. *Hoy,* 376 Ill. 292, 300.
Hyslop v. *Finch,* 99 Ill. 171, 183.

The steel ball of the wreckers is a too familiar sight in American cities. If we have a government of laws and not of men, and, if property can only be taken by Due Process of Law, then such proceedings as these must be stopped. Municipal authorities must not be allowed to take property without complying with conditions precedent maintaining fairness.

NOT ONLY PUBLIC INTEREST BUT ALSO FUNDAMENTAL JUSTICE REQUIRES A REVERSAL OF THE DECREES OF DEMOLITION HEREIN.

The pressure of population requires private housing, unless we capitulate to socialism or other forms of collectivism. This is a national problem. This Court should set guidelines as to procedures only too common in Chicago and other large cities.

The holders of policies in the first mortgagee, the second mortgagee, the tenants and the beneficiary of the trust were severely damaged. The beneficiary's life savings are wrapped up in this property. All of these damaged persons beg this Court to give them justice.

Respectfully submitted,

J. Edward Jones
13035 S. Western Avenue
Blue Island, Illinois 60406

Attorney for Defendant-Petitioner, Robert A. King

APPENDIX 1

Nos. 54259, 54474 Consolidated

CITY OF CHICAGO, a Municipal Corporation,
Plaintiff-Appellee,
vs.
GENERAL REALTY CORPORATION, NORTH AMERICAN COMPANY FOR LIFE AND HEALTH INSURANCE, CHARLES KRAUT, J. EDWARD JONES and ROBERT A. KING, as Trustees under Trust No. 1,
Defendants-Appellants.

Appeal from Circuit Court Cook County.

Honorable Richard A. Napolitano, Presiding.

MR. JUSTICE DIERINGER DELIVERED THE OPINION OF THE COURT:

This is an appeal from an order of the Circuit Court of Cook County entered May 26, 1969, placing an earlier demolition decree entered February 28, 1969, in full force and effect.

The property involved here was a three-story brick building containing 23 dwelling units and five stories, located at 1153-57 North Spaulding and 3253-59 West Division Street in the City of Chicago. On May 3, 1968, the building was investigated by a City building investigator, and on the basis of this investigation a complaint was filed by the City on June 19, 1968. The complaint alleged several violations of the Municipal Code of Chicago: (1) need for repair of walls and ceilings of the basement and second floor bathroom, (2) loose or broken plaster on ceilings and sidewalls in all apartments, (3) broken, miss-

ing and defective window panes, (4) basement units with inadequate separation from other parts of the building, substandard partitions and inadequate light and ventilation, (5) rats and unsealed rat holes, (6) no adequate garbage and refuse containers, and (7) accumulation of refuse and debris in basement and rear yard. The complaint was later amended to add defective porches as a violation. Count 2 of the complaint provides in part:

> "That Sidney D. Smith, the duly appointed Commissioner of Buildings for the City of Chicago, has determined said buildings to be dangerous and unsafe or uncompleted and abandoned."

To determine the ownership of the building the City conducted a title search, which disclosed three names: General Realty, Chicago Title & Trust Company, and Al Abraham. The title search also showed that the 1966 taxes were paid by General Realty Corporation but the tax bills went to Al Abraham. On June 25, 1968, service was made on Chicago Title & Trust Company, but General Realty could not be found and Al Abraham had moved.

In April, 1968, General Realty had sold its interest in the property to the First National Bank of Blue Island. However, this transaction was not recorded in the tract book until August 28, 1968. The First National Bank of Blue Island held the title in a trust for Robert A. King, who was named as beneficiary, but the real beneficial owner was J. Edward Jones, who used King as his nominee. As of August 1, 1968, the deed in favor of King and Jones had not been recorded.

The summons was returnable on July 16, 1968, and on that date a hearing was held at which a City building inspector who had investigated the property testified the

building contained the violations specified in the complaint. The court concluded the dangerous conditions on the property constituted an emergency, and the court thereupon appointed Number 2 Chicago Dwellings Association as receiver, to vacate the premises.

There was a hearing on August 1, 1968, at which all the parties were present, including King and Jones; first mortgagee, LaSalle National Bank; and second mortgagee, Charles Kraut. The court noted the alleged violations were mainly "housekeeping items," but there was testimony the peeling paint, falling plaster, rats, and other violations created an emergency situation which justified the appointment of the receiver, especially since there were many children living there.

At the numerous hearings which followed, the court heard testimony from the tenants and the Department of Public Aid to allow the tenants to remain and to see that the building was repaired. At a hearing on August 30, 1968, the attorney representing Jones claimed a licensed contractor had agreed to put the building in compliance with the building ordinances for $5,375. This cost included repair of the porches, plastering, painting and electrical work.

The new first mortgage holder, North American Company for Life & Health Insurance, informed the court it would forego filing a petition for foreclosure for "two or three weeks" to allow Jones a chance to raise the money for the repairs.

At the September 26 hearing, North American told the court the contemplated repairs had not been done yet. The court suggested North American file a petition to fore-

close so that a foreclosure receiver could be appointed to manage the property. The court then discharged the Chicago Dwellings Association as receiver for the property and continued the case, but did not set a specific date for the next hearing.

A chancellor, presiding over the foreclosure proceedings, appointed a new receiver, Tully Trainor, who took possession of the property. The first mortgage holder subsequently advanced approximately $3,200 for the repair of the porches and additional money for other repairs to maintain the building. At a hearing in the demolition court on February 21, 1969, a City inspector testified that three or four apartments had been rented out in violation of a court order. These apartments were among those in a deteriorated condition, and among the new renters were families with several children.

At the same hearing the inspector was asked whether there had been any progress during the period of proceedings since June of 1968:

> A. In regards to work in progress; at one time they had a couple of carpenters repairing the rear porches, and I would say that they are ninety per cent complied.
>
> Q. Is the building getting better, or worse?
>
> A. The only work that I was able to detect in the interior of the building was that they converted the front room into two bedrooms, and they cut it down the middle and they are using the front room as two bedrooms, and this was done without plans or permits.

The court then ordered Tully Trainor to vacate the premises instanter and allowed the City's motion for a

decree of demolition. Mr. Kraut asked for a stay of the decree of demolition, and the court stated:

"The decree will not be stayed. The testimony of the witness shows that the building has gone from bad to worse. There are many hazards. . . ."

At a hearing on April 11, 1969, the order of demolition was stayed to permit rehabilitation through sale of the interest of the two mortgagees and Jones to a party who would promise to adequately repair the building. However, negotiations for the sale fell through because of an inability to clear title, and on May 26 the court granted the City's motion to place the decree of demolition in full force and effect.

On May 26 Jones filed a motion for a supersedeas bond, but because proper notice was not served on all parties in interest, the motion was stricken. No further efforts were made to secure a bond. The building was then demolished at a cost of $7,963.

The defendants' first argument is there were insufficient grounds to warrant demolition under Chapter 24, § 11-31-1, of the Illinois Revised Statutes. It provides in part:

"The corporate authorities of each municipality may demolish, repair, or cause the demolition or repair of dangerous and unsafe buildings or uncompleted and abandoned buildings."

The defendants also rely on *City of Aurora* v. *Meyer*, 38 Ill. 2d 131 (1967), which interprets that statute. In that case a building was torn down without comparing the cost of repair with the value of the building and without giving the owner an opportunity to make the needed corrections. The court said:

"The law is well settled that in cases of this nature courts do not go further than is necessary to protect

> the public interest. Property may be ordered destroyed under certain conditions but only if the danger cannot be abated in any other way. It is only in cases where an absolute necessity exists that courts adopt the drastic method of correction by ordering destruction of the property."

The court further said:

> "Although not expressed in so many words, the plain implication of the act involved here is that if the property can be repaired with comparatively little expense the city ought to adopt this course rather than complete demolition, that only in cases where the structure is substantially beyond repair is an order for demolition contemplated. . . . The cost for repairs may well be a small fraction of the building's value. The court should find from the evidence what the specific defects are which render the building dangerous and unsafe. If they are such as may readily be remedied by repair, demolition should not be ordered without giving the owners a reasonable opportunity to make the repairs."

However, the situation is different here. In this case the reason for destruction was a dangerous condition which was not abated over a period of ten months. There were many hearings during which the defendants promised to place the building in compliance with City ordinances but never did. In the *Meyer* opinion the court stated:

> "If they are such as may readily be remedied by repair, demolition should not be ordered without giving the owners a reasonable opportunity to make the repairs."

Because of the owner's delay in complying with the ordinances, the legislative policy behind section 11-31-1 called for demolition of the property. The defendants had

ten months in which to make changes they said would cost only $5,375, yet they did not. The demolition decree of February 28, 1969, was stayed several times in an effort to save the building, and there were many hearings prior to that decree to determine the fair and proper course to be followed. But the only compliance was fixing the porches and several other minor items. All the rest of the violations had remained the same or had gotten worse.

In *City of Chicago* v. *Mulligan Enterprises*, 27 Ill. App. 2d 481 (1960), the City waited two and one-half years after a fire to order demolition, and the court said the City had proceeded "far more leisurely than the urgency of the statute contemplated." In the instant case, the court waited ten months before losing faith in the promises of the defendants. This allowed a substantial time to invest a mere $5,375 in a building claimed to be worth $150,000. The policy behind section 11-31-1 is the expeditious protection of the public from the dangers of unsafe buildings. *Chicago* v. *Logan*, 56 Ill. App. 2d 291 (1965). After an ample time to repair goes by without compliance, the only other alternative is demolition.

Whether the owners were given a reasonable opportunity to repair is a question of fact which will not be reversed unless it is against the manifest weight of the evidence. *Brown* v. *Commercial National Bank*, 42 Ill. 2d 365 (1969). In the case at bar the court received evidence of the condition of the building over a period of ten months. We think this was a reasonable length of time.

In *Mulligan*, the court also considered the question of whether evidence of comparative values was a condition precedent to a decree of demolition. At page 489, the court said:

"The next point made by defendants is that there was no proof either of the original or the deteriorated value of the premises. So far as Section 23-70.2 is concerned, no proof of value is necessary. The issue is whether the building was dangerous and unsafe or incompleted and abandoned."

The defendants next complain they did not receive notice of the July 16 hearing, therefore sufficient notice was not given and the appointment of a receiver was not justified. However, section 11-31-1 provides in part:

"Where, upon diligent search, the identity or whereabouts of the owner or owners of any such building shall not be ascertainable, notice mailed to the person or persons in whose name such real estate was last assessed shall constitute sufficient notice under this section."

We believe the title search conducted by the City constitutes a "diligent search" within the meaning of the statute. It was not the fault of the City that the proper parties could not be found. General Realty sold its interest in the property to the First National Bank of Blue Island in April of 1968, but that transaction was not recorded until August 28, 1968. The First National Bank of Blue Island merely held the property in a naked land trust for Robert A. King, the beneficiary, who in turn was the nominee of J. Edward Jones, who wanted to hide his ownership. The mortgagees also failed to record their interests.

In addition, the defendants were not prejudiced by the failure to serve the unrecorded owners personally. The receiver was appointed at an ex-parte hearing on July 16, but he did not have authorization to collect rents until after August 7, 1968. All of the defendants had appeared in court by August 1, and had ample opportunity to argue

the propriety of appointing the receiver. Although there were some unproven allegations claiming the receiver interfered with the collections of rent prior to August 7, the court was explicit that all rent prior to said date be paid to Mr. Jones.

The third argument is the demolition court erred in entering a decree of demolition because the foreclosure court and not the demolition court had jurisdiction. Their position is the demolition court was obliged to allow the foreclosure proceedings to terminate before it could take further action, and they also maintained the demolition court could not order the foreclosure receiver to vacate the premises because it did not have personal jurisdiction of him.

These arguments are not persuasive for several reasons. First, the demolition court never did abdicate jurisdiction. Charles Kraut, the second mortgagee, stated that on September 26, 1968, the demolition court "continued this matter without a date." Also, on September 26 the demolition court continued a motion by Jones which would have dismissed the First National Bank of Blue Island as a party. Thus, the conduct of the court and the belief of the parties show the court never relinquished jurisdiction.

It is argued, nevertheless, that once the foreclosure court enters the matter, the demolition court is bound not to interfere until those proceedings have run their course. Such is not the case here. The general rule is that where two actions or proceedings between the same parties, on the same subject and to test the same rights, are brought in different courts, the court which first acquires jurisdiction may dispose of the entire matter and no coordinate court is at liberty to interfere with its action. *Shilvock* v. *Shilvock*, 31 Ill. App. 2d 254 (1961). The action in the

foreclosure court was an action between private individuals. The action in the demolition court was an action by the City to enforce ordinances for the protection of the public. It cannot be maintained that the City is powerless to protect the people while private parties are settling their financial affairs.

Secondly, the receiver had been discharged by the foreclosure court before he had done anything to vacate the premises. Furthermore, if the demolition court had needed to acquire personal jurisdiction over the foreclosure receiver, it did so at the April 11 hearing, because he was represented by counsel at that time.

Jones complains that the Chicago Dwellings Association was not a proper receiver because it was an interested party, since it was controlled by the City. However, the case he cites in support of his argument, *Baker* v. *Administrator of Backus*, 32 Ill. 79 (1963), involved a receiver who was appointed for a private debt claim. The reason for receivership here is the violation of a city ordinance, not a dispute between private parties.

Jones also complains he did not have the written notice of demolition as provided in section 11-31-1, which allows an opportunity to repair:

> "The corporate authorities shall apply to the circuit court of the county in which such building is located for an order authorizing such action to be taken with respect to any such building if the owner or owners thereof, including the lien holders of record, after at least 15 days' written notice by mail so to do, have failed to put such building in a safe condition or to demolish it."

The purpose of the statute is to give the defendant an opportunity to repair if he wants to. *City of Chicago* v. *Mulligan Enterprises*, 27 Ill. App. 2d 481 (1960); *City of*

Danville v. *Hartley,* 101 Ill. App. 2d 31 (1968). In the *Hartley* case, the court said:

> "Considering that this matter has been in litigation for ten years, it is obvious that the continuing litigation has served the function of the notice and that, under the facts and circumstances here, the notice is not a condition precedent to further proceedings."

Jones had notice of the proceedings since August 1, 1968, and the demolition order was not entered until February 28, 1969, but not placed into full force and effect until May 26, 1969. Jones had much more than the minimum fifteen days to repair and failed to do so.

For the reasons stated, the judgment of the Circuit Court is affirmed.

Affirmed.

ADESKO, P. J., and BURMAN, J., concur.

APPENDIX 2

No. 5317

CITY OF CHICAGO, a Municipal Corporation,
Plaintiff-Appellee,

vs.

EUGENE A. BUSCH, Trustee under Trust No. 9357; HAROLD L. FEIGENHOLTZ, and JESSE FIELDS,
Defendants-Appellants.

Appeal from Circuit Court Cook County.

Honorable Richard A. Napolitano, Presiding.

MR. JUSTICE LEIGHTON DELIVERED THE OPINION OF THE COURT:

This appeal brings for review a demolition decree and a judgment that imposed a lien on real estate. Although state and federal constitutional questions are presented, the issue we resolve is whether the demolition decree is supported by evidence. The controversy is between plaintiff City of Chicago and defendants Eugene A. Busch, Harold L. Feigenholtz and Jesse Fields concerning a three-story building situated in the city at 3824 West Jackson Boulevard.

On December 12, 1967 plaintiff filed a two-count chancery complaint alleging, in Count I, that defendants Busch (as Trustee) and Feigenholtz owned or had an interest in the building. It was alleged that there then existed twenty-one uncorrected violations of the city building code. Plaintiff prayed for assessment against defendants of $4,200.00 as a fine for each day the violations

were allowed to exist. Count II realleged Count I and added that levying of a fine was not an adequate remedy for abatement of a nuisance; that issuance of a temporary and permanent injunction and appointment of a receiver were necessary to bring the subject property into compliance with the code; and that "[t]he duly appointed Commissioner of Buildings of the City of Chicago, has determined said building to be dangerous and unsafe or uncompleted and abandoned." Plaintiff prayed for equitable and legal relief.

Defendants were summoned to appear and answer the complaint, being told that "[i]f you fail to do so, a judgment by default may be taken against you for the relief asked in the complaint, and a warrant may be issued for your arrest." No answer was ever filed nor were defendants defaulted. Although there was no formal appearance, on February 15, 1968 a bill totalling $959.62 for repairs of the building was submitted to the court on a letterhead of the defendant Fields. On March 21, Busch, describing himself as an attorney appearing *pro se*, appeared for defendants.

From the sparse and somewhat confused record before us, it appears that by an order of February 21, 1968 the trial court found that the building at 3824 West Jackson Boulevard "[f]ails to conform in certain instances to the minimum standards of health and safety as set forth in the applicable ordinances of the City of Chicago." Because the building was "unfit for human habitation," defendants were ordered to vacate the entire building and board it up. The Relocation Division of the Department of Urban Renewal was directed to assist the tenants to find suitable living quarters elsewhere. On March 21, 1968 when Busch appeared, he expressed consent to the order. He was asked by the trial judge, "What are you going to

do with the building?" Busch answered, "I think we're going to work out some deal——somebody can go and get a permit to do some work on it." The cause was then continued from time to time until June 5, 1968.

On that day the assistant corporation counsel speaking for plaintiff-appellee, reviewed the status of the case. He told the trial judge that defendant-appellant Fields was going to purchase the property. A building inspector was called who testified to the inspection he made of the building the day before. He found it was not boarded as the court had ordered. Busch then called a former deputy commissioner of buildings of the City of Chicago who described his inspection of the building that day. He said he had talked with the new purchaser and that an architect had drawn rehabilitation plans to be presented to the Building Department. For the balance of the hearing there was a colloquy between the trial judge and Busch concerning the building, its sale to Fields and the desire of the new owner to proceed with rehabilitation. The cause was then continued one week.

When it was before the court again, the assistant corporation counsel told the court that "[t]he case is here today for a progress report, . . ." The same building inspector was called and reported that the building was boarded front and rear. The cause was then continued to July 10. On that date Busch reported to the court that "[w]e understand from the architect that the permit will be out either tomorrow or the next day." A building inspector was called who reported that an inspection the day before disclosed the building vacant and boarded. The cause was then continued to July 24, 1968. On that day Busch and Fields were in court. After telling the trial judge that "[r]epresentations were made by the de-

fendant that plans for the rehabilitation of the property would be completed within a day or two, and permits obtained," the assistant corporation counsel called a building inspector who testified that a permit had issued to deconvert the basement apartment and enclose stairways, halls and apartment separations. The trial judge asked who was going to do the work. Fields responded, saying he was going to do it himself. The assistant corporation counsel then told the court that "[u]nder these conditions the City will agree to a continuance of this matter for the work to get under way." In answer to a question by the trial judge, Fields replied, "We are getting a loan now, and I understand it takes quite a few days, but as soon as we get the loan we will start to work." The court then continued the case to September 18, 1968.

On September 11, however, with Busch representing the defendants, the case was called on "[t]he City's motion for a hearing instanter." The trial judge reminded Busch that the building was to be rehabilitated. Busch replied that the plans for rehabilitation of the building had been approved by the "neighborhood service program" and that a permit had been issued by plaintiff. The hearing proceeded with plaintiff calling a building inspector who testified that the day before he inspected the premises, he found the building vacant and boarded but no evidence of work in progress. He reviewed his previous inspections of the building and he said, "[a]t that time I found the building to be twelve per cent depreciated. To the best of my knowledge it remains the same." Then followed a colloquy between court and counsel. The assistant corporation counsel called attention to the background of the case, its numerous continuances and defendants' representations that they were going to rehabilitate the build-

ing. Busch on behalf of defendants reiterated the transfer of ownership of the property to Fields, the application for the loan and the issuance of the permit by plaintiff. The trial judge reviewed the history of the case and then for the first time said that plaintiff was requesting a decree of demolition. When Busch asked to be told the basis for the decree, the trial judge said, "[t]he basis is that you have a building that is vacant and boarded, and that Statute states that a vacant and boarded building is no defense, . . ." The court then continued the case one week "[f]or prove up on the City's motion for demolition. . . ."

On September 18 the "prove up" was heard. Plaintiff called two building inspectors. One described his viewing of the premises two days before. He said that "[t]he building was vacant and the rear was open. The front door was locked and there were several broken windows." The other inspector testified that he had gone to the building the day before and found it vacant, open and vandalized. He described the plumbing as partially stripped, the radiators broken. He found broken sashes and broken glass; and the rear porches and front masonry stairs were in need of repair. The plaster was loose and cracked throughout the building. "I estimated the building to be eighteen per cent depreciated at the time of that inspection." When asked if he saw any evidence of work being done on the premises, he answered, "There was none to my knowledge."

The balance of the hearing consisted of colloquy between court and counsel. Busch repeated the application for the loan, plaintiff's issuance of the permit and the desire of defendants to rehabilitate the building. The trial judge reviewed the history of the case and reminded

Busch of the failure to proceed with rehabilitation. The assistant corporation counsel insisted on issuance of the demolition decree. After denying Busch's request for an additional thirty days to await completion of the mortgage transaction and processing of the loan, the court said, "Let the record show that from the testimony and evidence the decree of demolition is allowed with lien and or judgment to attach for cost of demolition and court cost." The next day a "Decree of Demolition—Emergency" was entered in which the court "having heard evidence and being fully advised in the premises" found it had jurisdiction of the parties and of the subject matter; that plaintiff "has fully sustained the material allegations of the Complaint, and that the building located on the above premises is dangerous and in an unsafe condition . . . that the necessary costs and expenses of abating the nuisance by the said demolition of the building or structure be charged against the defendant owner of said premises . . . to attach [as] a lien against the aforesaid premises in accordance with Chapter 24, Section 11-31-1, . . ." The court retained jurisdiction to ascertain the costs and enter a money judgment. A short time later the trial judge was informed that the building had been demolished; and on December 13, 1968 a judgment was entered against defendants Busch and Feigenholtz in the sum of $2,335.00 for the expenses of demolition plus court costs.

In attempting to show that the record lacks evidence to support the demolition decree, defendants contend it was plaintiff's burden to prove that the demolished building was dangerous beyond repair. Thus, defendants argue, the trial court finding only that the building was dangerous and in an unsafe condition did not justify its de-

struction. Defendants point out that in *City of Aurora* v. *Meyer*, 38 Ill. 2d 131 at 137, 230 N.E. 2d 200 the Supreme Court speaking of the statutory basis for this suit, section 11-31-1 of the Illinois Municipal Code, said,

> [T]he plain implication of the act involved here is that if the property can be repaired with comparatively little expense the city ought to adopt this course rather than complete demolition, that only in cases where the structure is substantially beyond repair is an order for demolition contemplated. . . . The cost of repairs may well be a small fraction of the building's value. The court should find from the evidence what the specific defects are which render the building dangerous and unsafe. . . .

To meet these contentions plaintiff argues that defendant's failure to deny its complaint was an admission that the allegations were true and that the described municipal code violations existed. "There is no question," plaintiff says, "that the trial judge had ample evidence before him to determine that a public nuisance did indeed exist . . .; [he] ordered demolition not because the building had been shown to be beyond repair, but rather because defendants, after an ample opportunity to do so, were obviously incapable of repairing the buildings."

From like cases, it appears the law is settled that courts go no further than is necessary to protect public interests. *City of Danville* v. *Hartley*, 101 Ill. App. 2d 31, 241 N.E. 2d 460. Under authority of section 11-31-1 of the Illinois Municipal Code, property may be ordered destroyed under certain conditions but only if the danger cannot be abated in any other way. It is only in cases where an absolute necessity exists that courts adopt the drastic method of correction by ordering destruction of private property. *Childs* v. *Anderson*, 344 Mich. 90, 73

N.W. 2d 280 (1955); *Echave* v. *City of Grand Junction*, 188 Colo. 165, 193 P. 2d 277 (1948). In every instance the remedy which a city can obtain in a court exercising equitable powers is limited to the necessities of the case. Where hazardous conditions can be remedied by repair without major reconstruction of the property, the building may not be destroyed. Compare *Albert* v. *City of Mountain Home*, 81 Idaho 74, 337 P. 2d 377 (1959). It follows, therefore, that unless plaintiff had proved the building in this case could not be repaired and the municipal code violations corrected by means other than complete destruction, it had to seek relief other than demolition. *City of Aurora* v. *Meyer*, *supra*.

In the trial court, and before us, defendants concede their building was in need of repair. They complain, however, that as required by *City of Aurora* v. *Meyer*, the demolition decree did not contain findings of the specific defects which made the building dangerous and unsafe; nor did it contain findings of fact to support the conclusion that the building was a "nuisance." In fact, plaintiff's witnesses testified that at worse the building had depreciated 18%. The record is silent concerning the value of the property, the costs of the repairs or the condition of the structure so it could be determined whether it was beyond repair.

The record before us reflects a primary concern by plaintiff's city administration to obtain the funds for the rehabilitate the building. Indeed, plaintiff with commendable candor, insists it was this failure that justified entry of the demolition decree. This concern, however, overlooks that defendants had obtained a permit to make the repairs and had made an application to another department of plaintiff's city administration to obtain the funds

for the rehabilitation they had planned. We see an anomaly in defendants, in apparent good faith, seeking a permit, plaintiff issuing one and at the same time insisting on demolition of defendants' property without proof that its complete destruction was necessary, only because the owners (as plaintiff argues in this court) "[w]ere obviously incapable of repairing the building." Our review of the record leads us to conclude that the necessity for the demolition decree was not proved. *City of Danville v. Hartley, supra.* Accordingly, we reverse the decree of demolition and the judgment against defendants and remand the cause with directions that the trial court take further proceedings consistent with the views herein expressed.

Decree and Judgment Reversed and Cause Remanded with Directions.

BURKE, J. and LYONS, J., Concur.

JUDGMENT OF THE COURT

No. 44731

In The

SUPREME COURT OF ILLINOIS

CITY OF CHICAGO, a Municipal Corporation,

Plaintiff-Appellee,

vs.

GENERAL REALTY CORPORATION, NORTH AMERICAN COMPANY FOR LIFE AND HEALTH INSURANCE, CHARLES KRAUT, J. EDWARD JONES and ROBERT A. KING, as Trustee under Trust No. 1,

Defendants-Appellants.

ORDER

The petition for leave to appeal is hereby denied.

Dated: November 29, 1971